

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arthur Albano	Team: Squad #3	CCRB Case #: 201407556	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thu, 07/24/2014 3:00 PM	Location of Incident: [REDACTED]	Precinct: 81	18 Mo. SOL 01/24/2016	EO SOL 1/24/2016	
Date/Time CV Reported Fri, 07/25/2014 3:40 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/25/2014 3:40 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Ryan Galvin	08096	948997	081 PCT
2. SGT EreK Powers	05297	944907	081 PCT
3. POM Mark Xylas	11251	948160	081 PCT
4. POF Rikki Vanbrackle	08555	939628	084 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Romando Julien	08171	949152	081 PCT
2. POM Vaughan Ettienne	29839	928258	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Mark Xylas	Abuse of Authority: PO Mark Xylas threatened to damage § 87(2)(b) and § 87(2)(b) property.	A . § 87(2)(g) [REDACTED]
B . POM Mark Xylas	Abuse of Authority: PO Mark Xylas entered and searched § 87(2)(b) in Brooklyn.	B . § 87(2)(g) [REDACTED]
C . POM Ryan Galvin	Abuse of Authority: PO Ryan Galvin entered and searched § 87(2)(b) in Brooklyn.	C . § 87(2)(g) [REDACTED]
D . SGT EreK Powers	Abuse of Authority: Sgt. EreK Powers entered and searched § 87(2)(b) in Brooklyn.	D . § 87(2)(g) [REDACTED]
E . SGT EreK Powers	Other: Sgt. EreK Powers intentionally provided a false official statement when he said that he had no knowledge of an entry or search of § 87(2)(b) § 87(2)(b) in Brooklyn.	E . § 87(2)(g) [REDACTED]
F . POM Mark Xylas	Other: PO Mark Xylas intentionally provided a false official statement when he said that he did not enter or search § 87(2)(b) in Brooklyn.	F . § 87(2)(g) [REDACTED]
G . POM Ryan Galvin	Other: PO Ryan Galvin intentionally provided a false official statement when he said that he did not enter or search § 87(2)(b) in Brooklyn.	G . § 87(2)(g) [REDACTED]

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

Case Summary

On July 24, 2014 at approximately 3:00 p.m. § 87(2)(b) and § 87(2)(b) were standing in front of § 87(2)(b) in Brooklyn. They stated that they witnessed four plainclothes officers running down § 87(2)(b) a small private roadway in the immediate vicinity of § 87(2)(b) and then out of sight.

According to § 87(2)(b) and § 87(2)(b) moments later, the same four officers walked to § 87(2)(b) and up to the second floor of the apartment, announced themselves as police and loudly knocked on the door for a few minutes while Sgt. Powers and PO Van Brackle remained on the ground floor with § 87(2)(b) and § 87(2)(b). Sgt. Powers indicated to § 87(2)(b) at that time that they were looking for a male, and since § 87(2)(b) knew the residents of the apartment of which the officers were knocking on, he entered § 87(2)(b) to obtain their phone numbers. § 87(2)(b) entered and exited § 87(2)(b) closing the door behind him, but keeping the door unlocked.

The two officers returned down stairs and then directed their attention to § 87(2)(b) once he exited § 87(2)(b). PO Xylas asked § 87(2)(b) if he lived in the apartment, and § 87(2)(b) stated that he did not. PO Xylas allegedly responded, “You just came out of there, open the door or we’ll kick it in.” (**Allegation A**). § 87(2)(b) stated that he would ring the doorbell, but before he could PO Xylas allegedly turned the knob to the apartment door and walked inside (**Allegation B**). PO Galvin walked in behind PO Xylas while Sgt. Powers remained in the hallway, just outside the doorway (**Allegation C**). Due to the entry, officers awoke § 87(2)(b) and § 87(2)(b). An officer allegedly told § 87(2)(b) that they were looking for a minor by the name of “§ 87(2)(b).” § 87(2)(b) explained that no one by that name was present, but the officers continued to search the apartment. The officers still allegedly searched all of the rooms of the apartment in places in which a person could hide (under beds, in closets, etc.) (**Within Allegation C**). The officers’ alleged search produced negative results and the officers left the residence not having taken any steps to identify § 87(2)(b) or § 87(2)(b).

Mediation, Civil, and Criminal Histories

- On August 20, 2014, during her sworn statement, § 87(2)(b) rejected mediation.
- On May 1, 2014, a notice of claim inquiry was submitted to the NYC Comptroller’s office. A response to this inquiry will be included in the case file upon its receipt.
- The Office Court of Administration reveals the following criminal convictions for § 87(2)(b) (Board Review 1):
 - § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
- A search of The NYPD’s Booking Arraignment and Disposition System did not reveal any arrests for § 87(2)(b).
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- A search of the NYPD’s Booking Arraignment and Disposition System did not reveal any arrests for § 87(2)(b).

Civilian and Officers CCRB Histories

- This is the first complaint filed by or involving § 87(2)(b) or § 87(2)(b)
- Sgt. Powers has been a member of the service for seven years and there are no substantiated allegations against him. § 87(2)(g)
- PO Galvin has been a member of the service for four years and has one substantiated allegation against him: in CCRB case 201306539 the CCRB substantiated a vehicle search allegation against PO Galvin and recommended charges. The CTS does not have record of the NYPD disposition or penalty in regards to this allegation. § 87(2)(g)
- PO Xylas has been a member of the service for six years and there are no substantiated allegations against him. § 87(2)(g)
- PO Rikki Van Brackle has been a member of the service for nine years, and this is the first complaint filed against her.

Investigative Findings and Recommendations

Identification of Subject Officers

An Event Summary (Board Review 2) was obtained for a report of a firearm at 761 Herkimer St., in Brooklyn, in the immediate vicinity of the incident location (Board Review 3). The Event lasted between 2:36 p.m. and 3:42 p.m., which was inclusive of the timeframe of this incident. § 87(2)(b) stated that he saw officers, in plainclothes, running down § 87(2)(b) towards § 87(2)(b). PO Galvin, PO Xylas, and PO Etienne all state that when arriving at the location to address the report of a firearm, at least one individual ran from the officers. PO Galvin and PO Xylas both admitted to chasing the minor(s) down § 87(2)(b) towards § 87(2)(b). § 87(2)(b) stated that it was the same officers that were running on § 87(2)(b) soon after entered § 87(2)(b)'s apartment. According to the Event Summary and all officer testimony, the 81st Precinct Anti-Crime team were the only identified plainclothes unit on scene. The investigation therefore determined that § 87(2)(b)'s allegations would be pleaded against members of the 81st Precinct Anti-Crime team, narrowing the field of officers to Sgt. Powers, PO Etienne, PO Julien, PO Xylas, and PO Galvin.

§ 87(2)(b) and § 87(2)(b) all state that there was an officer that identified himself as a Sergeant that remained just outside of the door to § 87(2)(b) § 87(2)(b) § 87(2)(b) described him to be a 5'8"-5'9" tall, 170-180-lb black man with black hair and black eyes, in his early thirties. Sgt. Powers is a § 87(2)(b)-old 5'8" tall, 165-lb black man with black hair and § 87(2)(b) eyes, which matches § 87(2)(b)'s description. Since Sgt. Powers would be working in a supervisory capacity, and was allegedly present for both the entry and the entirety of the search of § 87(2)(b) § 87(2)(b) The fact that he did not actually cross the threshold of the doorway does not absolve him from responsibility of the actions of his subordinates. Therefore Allegation D will be pleaded against him.

§ 87(2)(b) alleged that three officers were inside of the apartment, one uniformed officer stood outside with Sgt. Powers and one uniformed officer stood at the back of the apartment, seemingly watching the windows of the apartment. § 87(2)(b) who was inside of the apartment recalled only two officers being present inside of the apartment and searching. § 87(2)(b)

§ 87(2)(b) stated that two to three officers were inside the apartment, but could not provide detailed descriptions of any. § 87(2)(b) and § 87(2)(b) were both consistent that two white officers in plainclothes searched the apartment. PO Galvin and PO Xylas were the only two white officers of the Anti-Crime team that were identified for this incident. Therefore Allegations B and C are pleaded against them.

Of the two white officers, § 87(2)(b) alleged that the shorter bald officer threatened to break down the door if he did not open it. PO Xylas is three inches shorter than PO Galvin and has a shaved head while PO Galvin does not. Therefore Allegation A will be pleaded against PO Xylas.

Allegations Not Pleased

§ 87(2)(b) alleged that an additional black officer entered the apartment to assist with the search, however § 87(2)(b) only stated that there were two officers. § 87(2)(b) was uncertain how many were inside, only having interacted with a white officer and stated that there was “one to two” other officers inside the apartment searching. As stated above, the investigation narrowed the potential subjects down to the 81st Precinct Anti-Crime team which consisted of five officers. The investigation identified Sgt. Powers as standing just outside of the apartment door and PO Galvin and PO Xylas inside, leaving PO Julien and PO Ettienne as the other potential subjects. Both PO Ettienne and PO Julien were consistent in their testimony (Board Review 4 and 5) that they both remained with the initial four minors that were stopped. Given that the minors were stopped for a report of a firearm, and there was a total of four subjects stopped, it is reasonable that both PO Julien and PO Ettienne remained with the minors. By process of elimination, this would leave no other plainclothes officers on scene to have searched the apartment with PO Galvin and PO Xylas. The investigation therefore credited § 87(2)(b)'s recollection that only two officers entered and searched her apartment and therefore an allegation for an entry and search will not be pleaded against, “An officer.”

Allegation A- Abuse of Authority- PO Mark Xylas threatened to damage § 87(2)(b) s and § 87(2)(b) s property.

Allegation B- Abuse of Authority- PO Mark Xylas entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation C- Abuse of Authority- PO Ryan Galvin entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation D- Sgt. Erek Powers entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.

It is undisputed that Sgt. Powers, PO Xylas, PO Galvin, PO Ettienne, and PO Julien responded to a report of a man with a firearm at the approximate time and location of this incident. It is undisputed that the result of their response to this assignment, four minors were placed under arrest, and an airsoft gun was recovered from them (see arrest reports Board Review 6).

According to Sgt. Powers, once he responded to the location the four minors were all standing still, and none of them ran from officers (Board Review 7). However, PO Mark Xylas (Board Review 8) and PO Galvin (Board Review 9) admitted to chasing an individual that fled from the original stop location. However, both stated that they only did so for a short distance (50-100 ft.), and after the subject was lost, they returned to the original stop location and did not take any additional steps to identify or locate the individual that they lost. All officers deny entering or searching any residences during the time of the incident, and denied even knocking on doors to canvass for any individual.

According to § 87(2)(b) (Board Review 10), after seeing the officers run down § 87(2)(b) they walked to § 87(2)(b) and up to the second floor of § 87(2)(b) where they knocked on the door of the second floor apartment for several minutes. During that time, § 87(2)(b) stated that he attempted to call the resident of that apartment (not a victim in this case) on the second floor to tell her that the police were at her home, and went inside § 87(2)(b) in the presence of Sgt. Powers and PO Van Brackle to obtain the second floor resident's phone number and a phone. § 87(2)(b) also told Sgt. Powers that "no guys" live on the second floor apartment. Ultimately the officers came back down to the first floor where Sgt. Powers, PO Van Brackle and § 87(2)(b) were and the officers then directed their attention to him. PO Xylas having been informed by an officer that § 87(2)(b) just exited § 87(2)(b) asked § 87(2)(b) if he lived there. § 87(2)(b) stated that the owners were inside, and PO Xylas allegedly stated, "Open the door or we'll kick it in." § 87(2)(b) went to go ring the doorbell and PO Xylas allegedly turned the knob and walked inside with PO Galvin.

§ 87(2)(b) stated that as they were entering, he stopped the officers for a second because § 87(2)(b)'s and § 87(2)(b)'s dogs "jumped up" and began barking upon sight of the officers. § 87(2)(b) then took both dogs to the backyard to prevent anything from happening to them.

§ 87(2)(b) (Board Review 11), § 87(2)(b) (Board Review 10), § 87(2)(b) (Board Review 12), and § 87(2)(b) (Board Review 13) all stated that the officers then searched the apartment in locations in which a person could hide (under beds, in closets, etc.). § 87(2)(b) also stated that an officer told her that they were looking for a boy by the name of "§ 87(2)(b)" and stated that someone told them that he lived in this apartment. After the officers finished their search, they left the location. § 87(2)(b) and § 87(2)(b) stated that a plainclothes black male officer who identified himself as a sergeant was standing outside the apartment with a uniformed plainclothes officer.

PO Van Brackle (Board Review 14) did not have a clear recollection of this incident, however when shown a copy of the Event Summary for this incident (Board Review 2), and a photograph of the incident location (Board Review 15), she testified that she recalled guarding the front door of a building that resembled § 87(2)(b). She also stated that she recalled hearing what sounded like a large dog barking. PO Van Brackle also stated that she recalled Sgt. Powers being present with her, though could not state what the officers were doing, and denied seeing any officers enter or search any of the apartments within § 87(2)(b).

§ 87(2)(g)
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It is a basic Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. Brigham City v. Stuart, 547 U.S. 398 (2006). While there are exceptions to the warrant requirement (voluntary consent, exigent circumstances, an emergency

situation), the burden to establish a basis for the application of such exceptions rests on the government. Welsh v. Wisconsin, 466 U.S. 740 (1984). (Board Review 16)

§ 87(2)(g)

Allegation E- Other Misconduct- Sgt. Ere Powers intentionally provided a false official statement when he said that he had no knowledge of an entry or search of

§ 87(2)(b) § 87(2)(b) **in Boorklyn.**

Allegation F- Other Misconduct- PO Ryan Galvin intentionally provided a false official statement when he said that he did not enter or search § 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation G- Other Misconduct- PO Mark Xylas intentionally provided a false official statement when he said that he did not enter or search § 87(2)(b) § 87(2)(b) in Brooklyn.

§ 87(2)(g) Sgt. Powers, PO Galvin, and PO Xylas conducted an entry and search of § 87(2)(b) in order to search for an individual that had fled from them. Sgt. Powers, PO Galvin, and PO Xylas all denied having taken any steps to identify or locate any individuals that ran from officers, entering or searching § 87(2)(b) § 87(2)(b) or even knocking on any doors within the vicinity of § 87(2)(b)

NYPD Patrol Guide Procedure 203-08 prohibits officers from intentionally making false official statements to the CCRB. (Board Review 16)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Pod: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date